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Office of the Secretary,
Federal Communications Commission
Room 222,
1919 M Street, N.W.,
Washington, D.C. 20554.

DOCKET FILE COPY ORIGINAL

Dear Ms. Salas:

Attached and transmitted herewith are ten copies of "Comments of Kyle Magrill" in FCC proceeding 97-397. It is requested that they be delivered to the Mass Media Bureau and to the offices of the Commissioners.

Sincerely,

Kyle Magrill

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of Section 309(j))	MM Docket No. 97-234
of the Communications Act)	FCC 97-397
-- Competitive Bidding for Commercial)	
Broadcast and Instructional Television Fixed)	
Service Licenses)	
)	
Reexamination of the Policy)	GC Docket No. 92-52
Statement on Comparative)	
Broadcast Hearings)	
)	
Proposals to Reform the Commission's)	GEN Docket No. 90-264
Comparative Hearing Process to)	
Expedite the Resolution of Cases)	

Comments of Kyle Magrill

In the above referenced NPRM, the Commission has proposed a system of competitive bidding (auction) as a means to award broadcast construction permits. Kyle Magrill (Magrill) makes the following comments in this proceeding:

In paragraph 16 of the NPRM, the Commission proposes to return application fees for those not wishing to participate in the auction process. The Commission collects application fees as a means to offset the cost of processing applications. In the case of auctions, either limited or no processing of applications has been proposed until after the auction. Then only the winner's application will be processed. Therefore, application fees should be returned to all who file for a channel but do not receive a construction permit. In cases where some processing is required, the Commission should establish a prorated fee schedule based upon the actual amount of processing required.

Paragraph 45 precludes applicants from settling mutually exclusive applications. This is adopted from the anti-collusion rules present at other FCC auctions, like those used for PCS. In the case of broadcasting, there is a public benefit to encouraging diversity and small businesses to acquire and operate broadcasting facilities. In many cases, particularly in medium and large markets, smaller entities may not have the ability to compete with the large institutions that will be bidding against them. Settlement whereby applications could be combined so as to allow some equity ownership of the other applicants may be the only way in which these smaller would-be broadcasters will be able to achieve a voice. In any case, it is unlikely that any applicant will have foreknowledge of the other applicants prior to the end of the cutoff window, so settlements prior to the filing of form 175 would be virtually impossible. The Commission should establish a time frame, after filing form 175, where competing applicants can settle among

themselves under rules similar to those in place now. Such rules should include limiting monetary compensation to actual expenses. Two possible time frame options could be 30 days or until the upfront money is due.

Paragraph 57 seeks to establish a minimum bid criteria, however, this seems to be unnecessary. If there is only one applicant, there is no auction and the channel is awarded for the application fee. If a second applicant files, what grounds does the Commission have for suddenly making the value of a channel some minimum number? Why should the addition of additional applicants trigger a change in value of a channel. Even if based on a study of fair market value, this would seem capricious as the auction itself establishes the actual value of the channel to the applicants. If the Commission proposes to argue that each channel has a certain minimum value, then that should be the minimum amount that each applicant should pay for the grant of a license, regardless of whether the channel is auctioned. If the channel is auctioned, then that becomes the new minimum license amount.

Paragraph 64 asks about separate filing windows for each type of service. Separate windows is logical because it gives the flexibility to process applications in some services and not others. Windows can always coincide with each other.

Paragraph 65 would eliminate First-Come-First-Served allocations. It is not necessary to eliminate FCFS applications. If a filing window closes, simply provide a procedure where a channel is designated FCFS and the first application takes it. that would be very similar to present procedures.

Paragraph 67 seeks to require the short form application electronically. While electronic filing should be allowed, it should not be required. Electronic procedures are still prone to various problems and tampering.

Paragraph 92 seeks comment about bidding credits that encourage diversity. A bidding credit should be awarded to applicants with no other significant broadcast interests. Another credit might be given to those applicants with no other broadcast interests in that market. In that case, an applicant with no other interests would receive a total of two credits.

Paragraph 95 would require that an applicant who was awarded a credit must hold a station for five years before selling their interest. In the changing market, five years is a very long time to make such promises. Many new broadcasters have found that even one year of operating at a heavy loss may strain them to near the point of bankruptcy. Two years is more reasonable and if the applicant chooses to sell the station to a buyer meeting the same or similar credit criteria that they met, then there should be no penalty. Any penalty should be prorated based upon the time that the applicant operated the channel.

Respectfully Submitted,

Kyle Magrill